C.S. 1002

SINGLE BENCH (1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.) (3)

WRIT PETITION NO. 5271 **/2005**

PETITIONER

Pradeep Kumar Vasnik,
S/o. Shri N.R. Vasnik,
Aged about 42 years,
Presently working as SDO,
Mini Mata Bango Canal, Sub-Division No. 13, Water Resources Department,
Champa, District Janjgir-Champa (C.G.)

P.R. No. 5448/05
Presented by Shri Abrol Khan
dated 19/10/05

VERSUS

RESPONDENTS

1. State of Chhattisgarh,
Through its Secretary,
Department of Water Resources, Mantralaya,
D.K.S. Bhawan, Raipur (C.G.)

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19/10/05
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2. Executive Engineer,
Water Resources Department,
Mini Mata Bango Canal Division, District Janjgir-Champa (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI, PROHIBITION AND FOR OTHER SUITABLE WRIT OR WRITS, ORDER OR ORDERS DIRECTION OR DIRECTIONS.

(77)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.5271/2005

Pradeep Kumar Vasnik

Vs.

State of C.G. & others.

ORDER

20/12/06

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.5271/2005

Pradeep Kumar Vasnik

Vs.

State of C.G. & others.

Shri Manindra Shrivastava, Sr. Advcoate, with Shri Ashish Shrivastava, counsel for the petitioner.

Shri A.S. Kachhawaha, Dy. Govt. Adv., for respondents no.1 & 2.

Shri K.A. Ansari, Sr. Advocate, with Shri N.P. Kela and Shri H.S. Ahluwalia, counsel for Shri M.H Khan/intervener.

ORDER

Heard learned counsel for the parties.

2. The petitioner has filed the present petition challenging the order of transfer on the ground that it was issued during the ban period and there was no approval/concurrence of the Chief Minister. The petition was filed on 19/10/2005. The petition is on three grounds, namely, (i) that the petitioner has been subjected to frequent transfer; (ii) that the transfer is against the guidelines dated 18/8/2005 as also against the circular dated 6/8/2003 during the mid session and (iii) that the transfer is without the approval/concurrence of the Chief Minister.

3. Return has been filed by the respondents supported by an affidavit and the documents.

4. Counsel for the respondents submits that the allegation of the petitioner that he has been subjected to frequent transfer is not correct as his first transfer was made on his own request. It is submitted that the matter was before the coordination committee and it is after the approval of the Chief Minister the impugned transfer order dated 13/10/2005 has been passed. It is further submitted that so far as the circular dated 18/8/2005 is concerned, it is for the transfers of Class III and Class IV employees and the petitioner is a Class II Officer and as far as the circular dated 6/8/2003 is

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concerned, the same is only a guideline and therefore the petitioner cannot claim to remain posted at a particular place of the basis of said circular. It is also submitted that the new place of posting of the petitioner is only 8 km. away from the earlier place of posting.

5. Lastly, it is contended by the State counsel that the reliever of the petitioner has already assumed the charge on 17/10/2005 in place of the petitioner and the petitioner deliberately did not join him as party respondent.

6. The intervener has also filed an application for intervention. Shri Ahluwalia, counsel for the intervener submits that the intervener was transferred and posted in place of the petitioner. He further submits that before the petition was filed on 19/10/2005, the intervener joined the office on 17/10/2005. The joining report is filed as Annex.A/1. He also submits that knowing fully well that the intervener has joined the office, the petitioner did not bring this fact to the notice of the Court.

7. The Apex Court in the case of *Gujrat Electricity Board vs Atmaram Sungomal Poshani* reported in *(1989) 2 SCC 602* held that transfer is an incident of service and employee has no right to be posted at a particular place and that transfer cannot be evaded merely on the ground of pendency of representation or difficulties. The Apex Court further in the case *Mrs. Shilpi Bose vs. State of Bihar* reported in *AIR 1991 SC 532* has held that the Courts should not interfere with transfer orders when are made in public interest or on administrative grounds unless they are made in violation of mandatory statutory rules or on the ground of mala fide and that even where executive instructions are violated, the Court ordinarily shall not interfere and the concerned transferee employee should approach the higher-ups in the department for the relief. In the same decision, it is also held that even where the transfer is effected on request of employees to avoid hardship, the same should not be interfered with by the Courts.

8. In the case of *Union of India vs. S.L. Abbas* reported in *(1993) 4 SCC 357* the Apex Court has held that no employee has any vested right to seek transfer to a place of his choice. Furthermore, in *State of Madhya Pradesh vs. S.S. Kourav* reported in *(1995) 3 SCC 270* the Apex Court held that the Court cannot decide relative hardship; it is for the administration to appreciate on a representation that may be made by the concerned employee and that hardship caused to an employee from transfer is not and cannot be a ground for judicial review of the transfer order. To the same effect is the decision of the Apex Court in *Union of India vs. H.N. Kirtania* reported in *(1989) 3 SCC 445*. In *Abani Kanta Ray vs. State of Orissa* reported in *1995 Suppl.(4) SCC 169* , the Apex Court opined that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. In *Chief General Manager (Telecom) vs. Rajendra* reported in *(1995) 2 SCC 532*, the Apex Court handed down the opinion that in the absence of strong and compelling grounds rendering the transfer order improper or unjustified, such an order should not be subjected to judicial review particularly when at the other place to which the transferee wanted to be retained or posted, there were complaints against him.

9. This Court while deciding Writ Petition No.2007/2004 (Ferro Scrap Nigam Limtied vs. B.P. Sharma and others) on 6/1/2005 has dealt with the matter of transfer. In para 21 of the said order, it was held as under:

> *"21. Having considered the rival contention of the learned counsel for the parties, in the opinion of this Court, the transfer is an exigency of service. It is well settled that no government servant or employee of public undertaking has any legal right to be posted forever at any one particular place as it is not only an incident but a condition of service. The contention of learned counsel for respondent that he cannot be transferred is not correct. That part of the order of the learned Industrial Court is not sustainable. The finding of the Industrial Court that respondent no.1 cannot be transferred is against the canon of service jurisprudence."*

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10. This Court has also recently considered the aforesaid issue regarding transfer of an employee in W.P.No.4960/2005 (*N.D. Atulkar vs. State of Chhattisgarh & Others*) and has held that it is well settled by a catena of decisions of the Apex Court and High Courts that transfer of a Government or public servant who is appointed to a cadre of transferable post from one place to another, is an ordinary incident of service and, therefore, does not result in any alteration of conditions of service to his disadvantage and therefore, transfer cannot be said to be punitive in nature. Transfer is an incident of service and an employee has no right to be posted at a particular place. An employee holding a transferable post has no legal right to insist for his posting at a particular place of his choice. Transfer of public servant made on administrative grounds of public interest should not be interfered with by the Courts unless there is strong and pressing grounds rendering the transfer order illegal on the ground of violation of mandatory statutory rules or on the ground of mala fide or on the ground of lack of authority. The Courts or the Tribunals cannot sit as appellate Court on the orders of the transfers made on administrative grounds. The reason for this self-imposed restraint is that the wheels of administration should be allowed to run smoothly and the Courts or the Tribunals are not expected to interdict the administrative system.

11. On perusal of the record, it appears that the petitioner has been transferred on administrative ground on account of exigency of service. The transfer order is passed by order and in the name of the Governor and the State Government has implemented the same. State Government is empowered to consider the cases of the persons working in the government department. It is also submitted that the new place of posting of the petitioner is only 8 km. away from the earlier place of posting. Apart from the

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above, the person posted in place of the petitioner has already joined the office.

12. So far as the allegation of the petitioner that he has been subjected to frequent transfer is not correct as his first transfer was made on his own request. So far as the allegation that the order has been passed without the approval/concurrence of the Chief Minister is concerned, it is borne out from the record that matter was before the coordination committee and it is after the approval of the Chief Minister the impugned transfer order dated 13/10/2005 has been passed.

13. Counsel for the parties brought to the notice of this Court the decision of the Apex Court in the case of **Kendriya Vidyalaya Sangthan vs. Damodar Prasad Pandey and others (2004 AIR SCW 5563)**. Reference is made to para 4 of the said judgment, which is quoted below:

> *"Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer. Unless the order of transfer is visited mala fide or is made in violation of operative guidelines, the Court cannot interfere with it. Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fide or is made in violation of operative any guidelines or rules the Courts should not ordinarily interfere with it. In Union of India & ors. Vs. Janardan Debanath & ano. (2004) 4 SCC 245, it was observed as follows:*
> *'No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category or transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities, substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National*

Hydroelectric Power Corpn. Ltd. vs. Shri Bhagwan (2001) 8 SCC 574'."

Applying the above principle, the present is not a case where the transfer order is required to be interfered with, especially when the transfer is within the range of 8 km.

14. Perusal of the circular dated 18/8/2005 goes to show that it is for the transfers of Class III and Class IV employees and the petitioner is a Class II Officer. As far as the guidelines dated 6/8/2003 are concerned, these are the executive instructions. They do not apply where the transfer is made on the administrative grounds due to exigency in service. Therefore, the petitioner cannot claim to remain posted at a particular place of the basis of said circular and more so when he is transferred to a place which is only 8 km. away from the earlier place of posting.

15. In view of the above discussions and in view of the law laid down by the Apex Court in the aforesaid cases and further the fact that the transfer is an exigency of service, not a case for setting aside the transfer order while exercising the extraordinary jurisdiction under Article 226/227 of the Constitution of India. However, the petitioner may make the representation before the competent authority, which shall be considered and decided on its own merits in accordance with law.

16. Accordingly, the petition stands disposed of.

Sd/-
Fakhruddin
Judge

P/H-